

**ASSEMBLY BILL**

**No. 1480**

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**Introduced by Assembly Member Richman  
(Coauthors: Assembly Members Cogdill, Maddox, and Wyland)**

February 21, 2003

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An act to amend Sections 4603.2 and 4650 of, to repeal Section 5814.5 of, and to repeal and add Section 5814 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1480, as introduced, Richman. Workers' compensation.

(1) Existing workers' compensation law requires a physician treating an injured employee to submit a report to the employer within 5 working days from the date of the initial examination.

This bill would require the physician to submit additional reports to the employer, as prescribed.

(2) Existing law requires the employer to make payment for medical treatment provided or authorized by the treating physician within 60 calendar days after receipt of the billing for the services together with any required reports and authorization.

This bill would change this payment timeframe requirement from within 60 to within 45 calendar days.

(3) Existing law provides that any properly documented amount billed that is not paid by the employer within the prescribed time period shall be increased by 10%, together with interest, unless the employer contests the items, as prescribed.

This bill would provide that if the employer contests, denies, or seeks review of the billing, the employer shall only be required to pay any interest or increase in compensation for delayed payment pursuant to

this provision if the provider objects in writing to the employer's written explanation for contesting, denying, or seeking review of the billing within 45 calendar days of receipt of payment, notice of nonpayment, or explanation of review. The bill would preclude the provider from seeking further reimbursement or filing a lien if the provider fails to make this objection within the 45 calendar day period.

(4) Existing law requires the Administrative Director of the Division of Workers' Compensation to adopt and revise, no less frequently than biennially, an official medical fee schedule that establishes reasonable maximum fees paid for medical services through the workers' compensation system.

This bill would prohibit the total payment to the provider of medical services from exceeding the maximum reasonable fees listed in the official medical fee schedule.

(5) Existing law requires, if an injury arising out of employment causes permanent disability, that the first payment of permanent disability indemnity be made within 14 days after the date of the last payment of temporary disability indemnity.

This bill would provide that when the monetary value of the permanent disability has been determined or estimated, the payment of the permanent disability indemnity shall be made at the same weekly rate as the temporary disability indemnity. The bill would require the employer to provide to the employee notice of this fact and other information along with the first payment of permanent disability indemnity.

(6) Existing law provides that when payment of compensation has been unreasonably delayed or refused, the full amount of the order, decision, or award shall be increased by 10%. Existing law requires the Workers' Compensation Appeals Board to determine the question of delay and reasonableness and to award reasonable attorney's fees incurred in enforcing the payment of compensation awarded.

This bill would repeal these provisions. The bill, instead, would prescribe procedures under which, when the payment of compensation has been unreasonably delayed or refused, the amount of the benefit unreasonably delayed or refused may be increased up to 25% or \$500, whichever is greater. The bill would require the appeals board to use its discretion in order to accomplish fair balance and substantial justice between the parties under these proceedings.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Section 4603.2 of the Labor Code is amended to read:

4603.2. (a) (1) Upon selecting a physician pursuant to Section 4600, the employee or physician shall forthwith notify the employer of the name and address of the physician. ~~The~~

(2) ~~The~~ physician shall submit a report to the employer, within five working days from the date of ~~the~~ *any of the following:*

(A) ~~The initial examination and shall submit periodic reports at intervals that may be prescribed by rules and regulations adopted by the administrative director examination.~~

(B) *Any significant changes in the employee's condition, treatment plan, or status.*

(C) *A claims administrator's reasonable request for additional information.*

(3) *The physician shall also submit a report within 21 days from the last report of any type during ongoing treatment.*

(b) (1) Payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made by the employer within ~~60~~ 45 calendar days after receipt of each separate, itemized billing, together with any required reports and any written authorization for services that may have been received by the physician. If the billing or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the billing is contested, denied, or considered incomplete *by the employer*, within 30 working days after receipt of the billing by the employer. A notice that a billing is incomplete shall state all additional information required to make a decision. Any properly documented amount not paid within the ~~60-day~~ 45 calendar day period shall be increased by 10 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the bill, unless the employer does both of the following:

~~(1)–~~

(A) Pays the uncontested amount within the ~~60-day~~ 45 calendar day period.

~~(2)–~~

(B) Advises, in the manner prescribed by the administrative director, the physician, or another provider of the items being contested, the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees. In the case of a bill ~~which~~ *that* includes charges from a hospital, outpatient surgery center, or independent diagnostic facility, advice that a request has been made for an audit of the bill shall satisfy the requirements of this paragraph.

~~If~~

(2) *If* an employer contests all or part of a billing, any amount determined payable by the appeals board shall carry interest from the date the amount was due until it is paid.

~~An~~

(3) *An* employer's liability to a physician or another provider under this section for delayed payments shall not affect its liability to an employee under Section 5814 or any other provision of this division.

(c) Any interest or increase in compensation paid by an insurer pursuant to this section shall be treated in the same manner as an increase in compensation under subdivision (d) of Section 4650 for the purposes of any classification of risks and premium rates, and any system of merit rating approved or issued pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of the Insurance Code.

(d) (1) Whenever an employer or insurer employs an individual or contracts with an entity to conduct a review of a billing submitted by a physician or medical provider, the employer or insurer shall make available to that individual or entity all documentation submitted together with that billing by the physician or medical provider. When an individual or entity conducting a bill review determines that additional information or documentation is necessary to review the billing, the individual or entity shall contact the claims administrator or insurer to obtain the necessary information or documentation that was submitted by the physician or medical provider pursuant to subdivision (b).

(2) An individual or entity reviewing a bill submitted by a physician or medical provider shall not alter the procedure codes billed or recommend reduction of the amount of the bill unless the documentation submitted by the physician or medical provider with the bill has been reviewed by that individual or entity. If the

reviewer does not recommend payment as billed by the physician or medical provider, the explanation of review shall provide the physician or medical provider with a specific explanation as to why the reviewer altered the procedure code or amount billed and the specific deficiency in the billing or documentation that caused the reviewer to conclude that the altered procedure code or amount recommended for payment more accurately represents the service performed.

(3) Unless the physician or medical provider has billed for extraordinary circumstances related to the unusual nature of the medical services rendered pursuant to subdivision (b) of Section 5307.1, this subdivision shall not apply when a bill submitted by a physician or medical provider is reduced to the amount or amounts specified in the ~~Official Medical Fee Schedule~~ *official medical fee schedule*, preferred provider contract, or negotiated rate for the procedure codes billed.

(4) The appeals board shall have jurisdiction over disputes arising out of this subdivision pursuant to Section 5304.

*(e) When the employer contests, denies, or seeks review of the billing, the employer shall only be required to pay any interest or increase in compensation for delayed payment pursuant to subdivision (b), if the provider of medical services objects in writing to the employer's written explanation for contesting, denying, or seeking review of the billing within 45 calendar days of receipt of payment, notice of nonpayment, or explanation of review. The failure of the provider to object within this 45 calendar day period shall preclude the provider from seeking further reimbursement or filing a lien.*

*(f) The total payment to the provider of medical services shall not exceed the maximum reasonable fee listed in the official medical fee schedule.*

SEC. 2. Section 4650 of the Labor Code is amended to read:

4650. (a) If an injury causes temporary disability, the first payment of temporary disability indemnity shall be made not later than 14 days after knowledge of the injury and disability, on which date all indemnity then due shall be paid, unless liability for the injury is earlier denied.

(b) (1) If the injury causes permanent disability, the first payment shall be made within 14 days after the date of last payment of temporary disability indemnity. Where the extent of

1 permanent disability cannot be determined at the date of last  
2 payment of temporary disability indemnity, the employer  
3 nevertheless shall commence the timely payment required by this  
4 subdivision and shall continue to make these payments until the  
5 employer's reasonable estimate of permanent disability indemnity  
6 due has been paid, and if the amount of permanent disability  
7 indemnity due has been determined until that amount has been  
8 paid.

9 (2) *When the monetary value of the permanent disability has*  
10 *been determined or estimated, the payment of the permanent*  
11 *disability indemnity shall be made at the same rate as temporary*  
12 *disability indemnity. Along with the first payment of permanent*  
13 *disability, the employer shall provide the employee with the notices*  
14 *specified in Section 4061 and the following warning in at least*  
15 *12-point type:*

16 *"WARNING: Your permanent disability indemnity is paid at the*  
17 *same weekly rate as your temporary disability indemnity, and any*  
18 *future payments of permanent disability indemnity may be*  
19 *deducted from the ultimate award or settlement."*

20 (3) *This subdivision shall not apply to payments made pursuant*  
21 *to subdivision (a) or (b) of Section 4659, or Section 4702.*

22 (c) Payment of temporary or permanent disability indemnity  
23 subsequent to the first payment shall be made as due every two  
24 weeks on *or before* the day designated with the first payment.

25 (d) If any indemnity payment is not made timely as required by  
26 this section, the amount of the late payment shall be increased 10  
27 percent and shall be paid, without application, to the employee,  
28 unless the employer continues the employee's wages under a  
29 salary continuation plan, as defined in subdivision (g). No increase  
30 shall apply to any payment due prior to or within 14 days after the  
31 date the claim form was submitted to the employer under Section  
32 5401. No increase shall apply when, within the 14-day period  
33 specified under subdivision (a), the employer is unable to  
34 determine whether temporary disability indemnity payments are  
35 owed and advises the employee, in the manner prescribed in rules  
36 and regulations adopted pursuant to Section 138.4, why payments  
37 cannot be made within the 14-day period, what additional  
38 information is required to make the decision whether temporary  
39 disability indemnity payments are owed, and when the employer  
40 expects to have the information required to make the decision.

(e) If the employer is insured for its obligation to provide compensation, the employer shall be obligated to reimburse the insurer for the amount of increase in indemnity payments, made pursuant to subdivision (d), if the late payment ~~which~~ *that* gives rise to the increase in indemnity payments, is due less than seven days after the insurer receives the completed claim form from the employer. Except as specified in this subdivision, an employer shall not be obligated to reimburse an insurer nor shall an insurer be permitted to seek reimbursement, directly or indirectly, for the amount of increase in indemnity payments specified in this section.

(f) If an employer is obligated under subdivision (e) to reimburse the insurer for the amount of increase in indemnity payments, the insurer shall notify the employer in writing, within 30 days of the payment, that the employer is obligated to reimburse the insurer and shall bill and collect the amount of the payment no later than at final audit. However, the insurer shall not be obligated to collect, and the employer shall not be obligated to reimburse, amounts paid pursuant to subdivision (d) unless the aggregate total paid in a policy year exceeds one hundred dollars (\$100). The employer shall have 60 days, following notice of the obligation to reimburse, to appeal the decision of the insurer to the Department of Insurance. The notice of the obligation to reimburse shall specify that the employer has the right to appeal the decision of the insurer as provided in this subdivision.

(g) For purposes of this section, “salary continuation plan” means a plan ~~which~~ *that* meets both of the following requirements:

(1) The plan is paid for by the employer pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy.

(2) The plan provides the employee on his or her regular payday with salary not less than the employee is entitled to receive pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy and not less than the employee would otherwise receive in indemnity payments.

(h) *Nothing in this section is intended to increase the aggregate amount of permanent disability due under Section 4659.*

SEC. 3. Section 5814 of the Labor Code is repealed.

1     ~~5814. When payment of compensation has been unreasonably~~  
2 ~~delayed or refused, either prior to or subsequent to the issuance of~~  
3 ~~an award, the full amount of the order, decision, or award shall be~~  
4 ~~increased by 10 percent. Multiple increases shall not be awarded~~  
5 ~~for repeated delays in making a series of payments due for the same~~  
6 ~~type or specie of benefit unless there has been a legally significant~~  
7 ~~event between the delay and the subsequent delay in payments of~~  
8 ~~the same type or specie of benefits. The question of delay and the~~  
9 ~~reasonableness of the cause therefor shall be determined by the~~  
10 ~~appeals board in accordance with the facts. This delay or refusal~~  
11 ~~shall constitute good cause under Section 5803 to rescind, alter, or~~  
12 ~~amend the order, decision, or award for the purpose of making the~~  
13 ~~increase provided for herein.~~

14     SEC. 4. Section 5814 is added to the Labor Code, to read:

15     5814. (a) When payment of compensation has been  
16 unreasonably delayed or refused, either prior to or subsequent to  
17 the issuance of an award, the amount of the benefit unreasonably  
18 delayed or refused may be increased up to 25 percent or up to five  
19 hundred dollars (\$500), whichever is greater. In proceeding under  
20 this section, the appeals board shall use its discretion to accomplish  
21 a fair balance and substantial justice between the parties.

22     (b) As a precondition to a claim for penalties under this section,  
23 the employee shall give written notice to the employer of the  
24 claimed unreasonable delay or refusal of benefits. If, within 20  
25 days from the date of services of this notice, the employer pays a  
26 self-imposed increase of 10 percent of the amount of  
27 compensation delayed or refused, in addition to any other  
28 self-imposed increases due under this division, there shall be no  
29 further penalty allowed under this section. If the employer disputes  
30 whether the delay or refusal is unreasonable, and the workers'  
31 compensation administrative law judge determines that the delay  
32 or refusal violates this section, the workers' compensation  
33 administrative law judge shall award the penalty prescribed in  
34 subdivision (a). In determining whether the delay or refusal is  
35 unreasonable, the workers' compensation administrative law  
36 judge shall consider only the specific facts resulting in the delay  
37 or refusal of the specific benefit that is the subject of the request  
38 for penalties.

39     (c) The appeals board shall have no jurisdiction to hear a claim  
40 for penalties under subdivision (a), unless the employee files a

1 claim for a penalty within one year from the date of the alleged  
2 unreasonable delay or refusal to pay benefits. Upon the approval  
3 of a compromise and release by the appeals board, it shall be  
4 conclusively presumed that any existing or potential penalties  
5 have been resolved, unless expressly excluded by the terms of the  
6 compromise and release.

7 (d) When a penalty is awarded under subdivision (a), the  
8 appeals board may allow a credit for any self-imposed increase  
9 under subdivision (d) of Section 4650 or subdivision (b), in order  
10 to accomplish a fair balance and substantial justice between the  
11 parties.

12 (e) Nothing in this section shall be construed to create a civil  
13 cause of action.

14 SEC. 5. Section 5814.5 of the Labor Code is repealed.

15 ~~5814.5. When the payment of compensation has been~~  
16 ~~unreasonably delayed or refused subsequent to the issuance of an~~  
17 ~~award by an employer that has secured the payment of~~  
18 ~~compensation pursuant to Section 3700, the appeals board shall,~~  
19 ~~in addition to increasing the order, decision, or award pursuant to~~  
20 ~~Section 5814, award reasonable attorneys' fees incurred in~~  
21 ~~enforcing the payment of compensation awarded.~~

